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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,779	04/09/2004	Perry Freiling	85269-102 RWD	8825
23529	7590	09/22/2005	EXAMINER	
ADE & COMPANY 1700-360 MAIN STREET WINNIPEG, MB R3C3Z3 CANADA			OKEZIE, ESTHER O	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/820,779

Applicant(s)

FREILING ET AL.

Examiner

Esther O. Okezie

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-13 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-10, drawn to a lifting device, classified in class 294, subclass 15.
- II. Claims 11-13, drawn to a method of lifting an object having a flat bottom supported on particulate material on the ground, classified in class 294, subclass 82.1.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different process such as handling and manipulating a log as described in the following rejection. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ryan Dupuis on 9/06/05 a provisional election was made without traverse to prosecute the invention of the apparatus corresponding to claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-3,6,7 are rejected under 35 U.S.C. 102(b) as being anticipated by Alfredson.
2. Re claim 1, Alfredson discloses a lifting device for handling logs, comprising: an elongate shaft member (12) extending in a longitudinal direction between respective first and second ends; a hook member (17) supported on the first end of the shaft member, the hook member being substantially straight along a hook axis lying substantially perpendicular to the longitudinal direction of the shaft member; and a gripping member (14) supported on the shaft member adjacent the second end thereof for being gripped in a hand of a person.
3. Re claim 2, the shaft member and the hook member are integrally formed of a single rod of material which has been deformed (abstract, fig 1)
4. Re claim 3, the shaft member is a circular in cross section at the first end thereof (fig 1).
5. Re claim 6, the gripping member comprises a handle mounted on the shaft member transversely to the longitudinal direction of the shaft member and the hook axis (fig 1).
6. Re claim 7, the handle is fixed in orientation relative to the shaft member and the hook member (fig 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 4,5,10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfredson.

8. Re claim 4, Alfredson does not disclose the length of the tool. It would have been obvious to construct the shaft approximately two feet in length or more in order to engage logs that are far in reach, furthermore it would have been an obvious matter of design choice to construct the shaft approximately two feet in length, since such a modification would have involved mere change in size of a component. A change in size is generally recognized as within the level of ordinary skill in the art.

9. Re claim 5, Alfredson does not disclose the cross sectional dimensions of the hook or shaft member. It would have been to construct the shaft and hook cross sectional dimensions substantially less than half an inch so that the tool is thick enough to hold logs without bending under pressure furthermore it would have been an obvious matter of design choice to construct the shaft and hook cross sectional dimensions substantially less than half an inch, since such a modification would have involved mere change in size of a component. A change in size is generally recognized as within the level of ordinary skill in the art.

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10. Re claim 10, Alfredson discloses only one lifting hook. It would have been obvious to one of ordinary skill in the art to produce multiple lifting devices for lifting heavier objects; furthermore mere duplication of is generally recognized as within the level of ordinary skill in the art.

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alfredson in view of Fowler.

12. Re claim 8, Alfredson does not disclose injection molding the handle about the shaft. Alfredson discloses bending a single rod to form the handle and hook about the shaft. Fowler discloses a sliding hook wherein the hook member (12) and the handle body (14) are injection molded to the body portion (11; col. 3, lines 29-44) It would have been obvious to one of ordinary skill in the art to injection mold pieces together to form the hook of Alfredson as taught by Fowler or weld or bend the pieces together as disclosed in the Applicant's disclosure (page 3 of the Specification, lines 12-17). Molded sections undergo less tensile stresses than sections formed by bending, accordingly, these sections would be stronger for lifting objects.

13. Re claim 9, Alfredson discloses the second end of the shaft deformed to form the handle. Alfredson does not disclose a step of deforming the shaft before injection molding the handle. It would have been obvious to one of ordinary skill in the art to deform the shaft to fit the handle before injection molding.

Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (571) 272-8108. The examiner can normally be reached on Mon-Thurs 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A. Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EOO



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